

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS TYRONE CARTER,

Petitioner,

v.

Civil No. 2:16-CV-11489

HONORABLE GERALD E. ROSEN

UNITED STATES DISTRICT JUDGE

JEFFREY WOODS,

Respondent,

/

**OPINION AND ORDER GRANTING PETITIONER'S MOTION FOR AN EXTENSION
OF TIME TO FILE HIS POST-CONVICTION MOTION FOR RELIEF FROM
JUDGMENT WITH THE STATE COURT**

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he sought relief from his state court convictions. This Court held the petition for writ of habeas corpus in abeyance to permit petitioner to return to the state courts to exhaust additional claims which had not yet been presented to the state courts. The stay was conditioned on petitioner initiating his state post-conviction remedies within sixty days of receiving this Court's order and returning to federal court within sixty days of completing his state court post-conviction proceedings. *Carter v. Woods*, No. 2:16-CV-11489, 2016 WL 5661591 (E.D. Mich. Sept. 30, 2016).

Petitioner filed a motion for an extension of time to file his post-conviction motion for relief from judgment with the state courts, which was granted.

Petitioner has filed a second motion for an extension of time. For the reasons that follow, petitioner is GRANTED a sixty day extension of time to file his post-conviction motion for relief from judgment with the state court.

Petitioner claims that the Michigan Department of Corrections lost his original 6.500 post-conviction motion. Petitioner has requested the assistance of prison paralegals through the Legal Writers Services to draft another motion. Petitioner also claims he needs additional time to collect affidavits in support of his claims.

Petitioner is granted a sixty day extension of time to file his motion for relief from judgment with the state trial court. A federal district court has the power to extend the stay of a habeas petition, particularly where the respondent does not oppose the extension of the stay. *See e.g. Roberts v. Norris*, 415 F.3d 816, 819 (8th Cir. 2005). Petitioner did all that he could reasonably do to file his state post-conviction motion for relief from judgment on time, but was “prevented in some extraordinary way” from filing the motion with the state courts on time. Accordingly, an extension of time should be granted to petitioner. *See Schillereff v. Quarterman*, 304 F. App’x. 310, 314 (5th Cir. 2008).

ORDER

IT IS ORDERED that the motion for an extension of time [Dkt. # 13] is **GRANTED**. Petitioner may file a motion for relief from judgment with the state court within **sixty (60) days of receipt of this Court’s order**. If he fails to file a motion or notify the Court that he has done so, the Court will lift the stay and will reinstate the original petition for writ of habeas corpus to the Court’s active docket and will proceed to adjudicate only those claims that were raised in the original petition.

If Petitioner files a motion for relief from judgment, he shall notify this Court that such motion papers have been filed in state court. The case shall then be held in abeyance pending Petitioner’s exhaustion of the claims.

After Petitioner fully exhausts his new claims, Petitioner is **ORDERED to file an amended Petition that includes the new claims within sixty days after the conclusion of his state court post-conviction proceedings, along with a motion to lift the stay.** Failure to do so may result in the dismissal of his case.

s/Gerald E. Rosen
United States District Judge

Dated: January 17, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 17, 2017, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135